

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

FARRAH JONES

Plaintiff

v.

Civil Action No. 1:93CV72-D-D

MISSISSIPPI STATE UNIVERSITY

Defendant

MEMORANDUM OPINION

This matter is before the undersigned on the defendant's, Mississippi State University (the "University"), motion for summary judgment. The plaintiff filed this complaint on March 15, 1993, seeking to recover actual and punitive damages from the defendant for violation of the Rehabilitation Act of 1973 (the "Act") and for violation of the American with Disabilities Act ("ADA"). The complaint also alleged that the defendant breached its implied duty of good faith in violation of state law. By letter dated July 13, 1994, the plaintiff confessed the motion to dismiss the Americans with Disabilities Act claim. The court now considers the defendant's motion for summary judgment as it pertains to the plaintiff's remaining claims.

FACTUAL BACKGROUND

Plaintiff Farrah Jones was employed as a secretary with the Financial Aid Department of Mississippi State University from July 9, 1989, to May 4, 1992. The plaintiff tendered a resignation letter on April 20, 1992. This dispute arises from the circumstances surrounding her resignation.

When Ms. Jones became employed at the University it is undisputed that she suffered from diabetes. Ms. Jones informed the Director of Financial Aid and Scholarships, Audrey Lambert, of her condition at the initial interview for the secretarial position. At that time, the plaintiff advised Ms. Lambert that she was a diabetic and that the condition would not interfere with her work performance. The plaintiff contends that her work was satisfactory up until shortly before she was forced to resign.

The evidence reflects that all the support staff in the financial aid office were given an annual review of their work performance. It is undisputed that the plaintiff received three (3) work performance evaluations during the course of her employment.¹ The first evaluation was positive. The second evaluation cited various problems with the plaintiff's work performance, although the defendant readily admits that the problems were correctable. However, in the third evaluation, the plaintiff was given a less than satisfactory overall review by two of her supervisors. In the third evaluation the plaintiff was advised that improvement was necessary in her work performance. The plaintiff agrees with the University's assessment of the evaluations, except that she claims she received a "satisfactory" rating on the second evaluation. Ms. Jones however provides the court with a thorough outline of a sequence of events of mistreatment by director Lambert which purportedly explains why she received the less than "satisfactory" evaluation in March of 1992 and why her work performance declined. She claims these actions taken by Lambert violate the Rehabilitation Act.

The court summarizes the facts as submitted by the plaintiff below.² In late 1991, Jones began experiencing physical difficulties due to her diabetes. This continued to develop until it reached a point in late March and early April 1992 in which Jones was totally incapacitated by her diabetic condition. The plaintiff submits that in late 1991, director Lambert began a constant and vicious campaign which was designed to force Jones to quit her job. Specifically, Ms. Jones contends that on one occasion, Lambert called Jones into her office and told her that both of Jones' immediate supervisors, Teresa Bost and Joel Harrell,³ had given up on her. Following the meeting, Jones approached Bost and Harrell who both informed the plaintiff that the statements were not true and that her work was satisfactory. Jones further claims that Lambert began a pattern of taking any

¹ The evidence indicates that the plaintiff was evaluated in March of 1990, in the spring of 1991, and again in March of 1992.

² The factual summary is taken from the plaintiff's brief in opposition to the defendant's motion for summary judgment and various affidavits and deposition excerpts submitted by both parties.

³ Bost was Assistant Director in the Financial Aid Department, while Harrell served as Assistant Director of Scholarships.

available opportunity to "verbally abuse" her. The plaintiff claims that Lambert continued to "find excuses to criticize Jones in a personal and hateful manner" throughout the remainder of her employment with the University.

Additionally, Jones claims that she was singled out for errors which were common to any secretarial employee. She claims she was harshly criticized for every small mistake she made, often driving her to tears. Jones also mentions a time when she was allegedly falsely accused of lying about overtime hours. All of these events, Jones believes, led to her eventual severe diabetic condition.

As her diabetes became more uncontrollable, allegedly due to the stress she was placed under by Lambert, her blood sugar problems made it difficult for her to concentrate at times, and eventually developed into a condition called diabetes neuropathy. Jones admits that as her diabetes would get more out of control, her job performance was negatively affected. Jones attempted to inform Lambert of how her physical problems were influencing her work, but claims that Lambert refused to believe her explanation and continued to personally humiliate her.

In any event, the record reflects that the plaintiff was given ample opportunity during the work day to tend to her insulin requirement (i.e. take shots and tend to other necessary precautions to control her diabetes). She does not claim otherwise. However, as her condition became more and more severe, it became apparent that her normal everyday procedures to control the diabetes would not be sufficient. During the period from late 1991 to early 1992, Jones allegedly sought but was urged not to take her medical leave. She claims that Lambert and other supervisors urged her to try to refrain from using her medical leave during the "busy season", late October of 1991 to April of 1992. She argues that this apparent denial of leave resulted in her finally becoming "totally incapacitated". The defendant counters that the plaintiff never requested leave time which was not

granted⁴ and further that Lambert had no authority to grant or deny medical leave time if requested.⁵

The plaintiff asserts that her diabetes worsened due to the increased stress she suffered at the hands of Lambert. The complications made it such that normal insulin shots would not control her blood sugar count, which in turn caused her work performance to continue to decline. As a result of her worsening condition, Jones admittedly had to take a significant number of medical leave days. Her leave documents reflect that she took medical leave from February 18, 1992, through March 6, 1992, a total of some seventy-eight (78) hours.

More importantly, from April 3, 1992, through April 9, 1992, Jones again used her medical leave time to tend to her severe diabetic condition. During this time her physician advised that she stay home from work for some twenty-one (21) days. The record indicates that Jones was entitled to that number of days on her medical leave and was apparently using her medical leave during the additional days.⁶ The plaintiff avers that during the week of April 3, Lambert would frequently call and harass her wanting to know her future intentions. The plaintiff claims that Lambert specifically stated that "I [Lambert] will not approve your sick leave nor personal leave unless I have your resignation." (Jones Deposition at 21-22).

The plaintiff tendered her hand-written letter of resignation on April 20, 1992.⁷ The plaintiff contends that the resignation letter resulted from her belief that if she did not immediately resign, Lambert would immediately terminate her. Jones bases her belief on her conversation with Paula

⁴ In support of its position, the University submitted a copy of the plaintiff's leave time throughout her employment with the University. The document does show that the plaintiff enjoyed considerable leave time during the "busy season".

⁵ Jones contends that she was unaware of the University's policy and was not informed of it until April 3, 1992.

⁶ The University submitted that on April 20, 1992, the date of her resignation letter, the plaintiff had medical leave to last her through May 4, 1992 and personal leave time to take her from May 4 to June 3, 1992.

⁷ The letter advised that the effective date of the resignation be June 3, 1992, at which time the plaintiff believed her medical and personal leave to be expired. In addition, the letter noted plaintiff's intention to return to work after getting her diabetes under control; however, due to the increased stress she believed that resigning would be necessary for health reasons.

Jernigan, the Employee Relations Manager for the Department of Human Resources Management at the University. Jones stated in her deposition that Jernigan "told me that they [the University] were a freewill employer and that if I did not turn in my resignation, that they could fire me at any time that they wanted to."⁸ (Jones Deposition at 22). She argues that, because of the harassment and mistreatment by Lambert, she was constructively discharged from her employment with the University.

At any rate, upon receiving the resignation letter, the University, which retains the option to set the time and conditions of termination, opted to make the plaintiff's resignation date effective May 4, 1992, which was the expiration date of her medical leave. The record reflects that this would provide her with medical insurance through the month of May. The plaintiff was then paid in cash for the value of the remainder of her personal leave. Subsequent to pursuing other avenues of redress,⁹ the plaintiff filed this action claiming violations of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. The complaint also included a claim for breach of implied duty of good faith under state contract law. As previously noted, Jones confessed the motion for summary judgment as it pertains to her claim for violations of the ADA. The court now considers the University's motion for summary judgment on the plaintiff's remaining claims. The court finds that the plaintiff has not proven that she was "otherwise qualified" for the secretary position. Additionally, the court is of the opinion that the record is totally devoid of any evidence indicating that Ms. Jones

⁸ The plaintiff was concerned about being fired because such action would result in her losing her medical insurance. She was scheduled to be hospitalized on May 4, 1992, to begin treatments with an insulin infusion pump. By resigning and gaining credit for her sick and personal leave through early June, the hospital procedure would be covered under her medical insurance with the University.

⁹ Following her resignation, Jones filed a claim for benefits with the Mississippi Employment Security Commission. In June of 1992, the Commission denied her claim for benefits finding that she left her employment voluntarily and without good cause. She filed a Notice of Appeal on June 29, 1992, in which, after a telephone hearing, the referee affirmed the decision of the Commission. The decision was again affirmed by the Board of Review on September 8, 1992.

The plaintiff then made a claim with the Equal Employment Opportunity Commission. On December 22, 1992, the EEOC found that there was no evidence in the record to substantiate the plaintiff's claim of harassment and that there was no evidence of "discriminatory animus against individuals with disabilities" by the University.

was "adversely treated solely because of her handicap." Because the plaintiff has failed to meet her burden of proof, i.e. creating a genuine issue of material fact as to these requirements, the motion for summary judgment on the plaintiff's Rehabilitation Act claim will be granted. The court further finds that, because Mississippi law does not recognize an implied duty of good faith in employment contracts, the plaintiff's state law contract claim will be summarily dismissed.

Summary Judgment Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. F.R.C.P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). After a proper motion for summary judgment is made, the non-movant must set forth specific facts showing that there is a genuine issue for trial. Hanks v. Transcontinental Gas Pipe Line Corp., 953 F.2d 996, 997 (5th Cir. 1992). If the non-movant sets forth specific facts in support of allegations essential to his claim, a genuine issue is presented. Celotex, 477 U.S. at 327, 106 S. Ct. at 2554. "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. and Loan Ins. v. Kralj, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the non-moving party. King v. Chide, 974 F.2d 653, 656 (5th Cir. 1992).

DISCUSSION

The Act prohibits discrimination against otherwise qualified individuals with handicaps in programs that receive federal financial assistance. The act is intended to ensure that handicapped individuals receive the same treatment as those without handicaps. Chiari v. City of League City, 920 F.2d 311, 315 (5th Cir. 1991). To qualify for relief under this statute, the plaintiff must establish a

prima facie case by proving that (1) he was an "individual with a handicap"; (2) he was "otherwise qualified"; (3) he worked for a "program or activity" that received federal financial assistance; and (4) he was adversely treated solely because of his handicap. Chandler v. City of Dallas, 2 F.3d 1385, 1390 (5th Cir. 1993); Southeastern Community College v. Davis, 442 U.S. 397, 406, 99 S. Ct. 2361, 2367, 60 L.Ed.2d 980 (1979); See Rehabilitation Act of 1973, 29 U.S.C. § 794. The burden of proof for each of these elements lies with the plaintiff. Chandler, 2 F.3d at 1390.

The University has only raised questions as to elements two (2) and four (4) above. The court considers whether the plaintiff has established "a genuine issue of material fact" as to these elements below.

I.

The court is of the opinion that the plaintiff has failed to create a question of fact as to whether or not she was "otherwise qualified" for her secretary position. The Supreme Court defined an otherwise qualified person as "one who is able to meet all of a program's requirements in spite of his handicap." Southeastern Community College v. Davis, 442 U.S. 397, 406, 99 S. Ct. 2361, 2367, 60 L.Ed.2d 980 (1979)(emphasis added). "To determine whether an individual is otherwise qualified for a given job, we must conduct a two-part inquiry. First, we must determine whether she could perform the essential functions of the job, i.e., functions that bear more than a marginal relationship to the job at issue. Second, if (but only if) we conclude that the individual is not able to perform the essential functions of the job, we must determine whether any reasonable accommodation by the employer would enable him to perform those functions. As with establishing the... [the other requirements of a prima facie case], the burden lies with the plaintiff to show he is otherwise qualified." Chandler, 2 F.3d at 1393-94 (citing Chiari, 920 F.2d at 315). The court finds that Jones has failed to establish "a genuine issue of material fact" as to her being otherwise qualified for the secretary position.

The plaintiff argues that she has created a "genuine issue of material fact" because of her positive evaluations during the early stages of employment and her assertion that her immediate two

supervisors, Bost and Harrell, repeatedly complemented her work performance. She claims that this evidence effectively rebuts Lambert's poor evaluations. However, in reviewing the record, the plaintiff has admitted in her deposition that, as a result of her worsening condition, she was performing her work duties poorly and that her work performance was declining. (Jones Depo. at 36, 48, 64). The plaintiff unequivocally stated in her affidavit that:

Toward the end of my employment in the Financial Aid Office, I did develop a problem with having typographical errors in my work. During November, 1991 until April, 1992, this problem did get worse, because of my physical condition. I explained to one of my supervisors, Bost, that I was having problems with physical pain and was having difficulty concentrating upon my work and that these symptoms were the result of the fact that my diabetic condition was getting worse and becoming more and more uncontrollable and that I needed to take a medical leave in order... to get these problems under control.

(Jones Aff. at 3).

One of plaintiff's immediate supervisors, Teresa Bost, in her affidavit established that certain responsibilities were necessary for effective performance of the plaintiff's job. Specifically, Jones' job required that she be around her desk except for scheduled breaks and restroom breaks, that she be able to effectively supervise her workstudy students, and that she produce accurate typing because of the numerous documents released by the department. (Bost Aff. at 1-2). Clearly, by the plaintiff's own admissions, her diabetic condition was making the fulfillment of these responsibilities unattainable. The plaintiff cannot contend otherwise. The plaintiff's argument that she was able to fulfill her job responsibilities during the early stages of her employment is of no consequence. Because Ms. Jones has not met her burden of showing she was able to perform the essential functions of her job, or create a genuine issue of material fact as to this requirement, she has failed meet the "otherwise qualified" element of the aforesaid two part inquiry. The plaintiff has not presented any evidence to this court concerning the second prong of our inquiry. Accordingly, the court is of the opinion that the plaintiff has failed to create "a genuine issue of material fact" on the issue of whether or not she was "otherwise qualified" for the secretary position. Therefore, summary judgment in favor of the University is appropriate on this ground.

II.

Furthermore, to qualify for relief under the Act, Ms. Jones must demonstrate she was "adversely treated solely because of her handicap." Plaintiff has wholly failed to produce any evidence to prove that any actions taken against her by Lambert, or any other employee of the University, were solely based upon her diabetic condition. The plaintiff has outlined a sequence of events of alleged mistreatment by Lambert, but fails to, and cannot, show that any of Lambert's action were directed at the plaintiff because of her diabetes.

To the contrary, it is undisputed that Jones informed Lambert that she was a diabetic when she originally interviewed for the secretarial position. Lambert hired Jones for the position despite her diabetes. For reasons which are not apparent to the court, Lambert's and Jones' working relationship began to sour. The plaintiff alleges that in late 1991 Lambert "began a constant and vicious campaign which seemed designed to make Jones quit her job." Specifically, Jones stated in her affidavit that "[t]he abuse I received from Lambert from the last part of my employment at the Financial Aid Office was constant and was personal in nature, always belittling, humiliating and accusatory in tone." (Jones Affidavit at 3). Conspicuously missing from the evidence before this court is how any of the alleged abuses were due to the plaintiff's diabetes. As mentioned, when Jones was hired, the University was well aware of her diabetes, but did not consider the condition in determining to hire her. The plaintiff herself uses the words that the abuse was personal in nature. Clearly, mistreatment as a result of personal dislike does not warrant relief under the Act. The Act was not created to redress wrongful mistreatment simply because the worker was handicapped. A discharge may well be unfair yet not be evidence of handicap bias under the Act. To make out a Rehabilitation Act claim, the plaintiff must establish the existence of discrete facts that show some nexus between the employer's actions and the employee's handicap. There is simply no proof of any nexus here.

The Fifth Circuit has held that, in Age Discrimination in Employment Act cases, the court when considering summary judgment must decide whether plaintiff's facts, if believed, would prove that, more likely than not, the employer fired the employee because of his age. Bodenheimer v. PPG

Industries, Inc., 5 F.3d 955, 959 n. 8 (5th Cir. 1993); See St. Mary's Honor Ctr. v. Hicks, __ U.S. __, 113 S. Ct. 2742, 125 L.Ed.2d 407 (1993); Moore v. Eli Lilly & Co., 990 F.2d 812, 819 (5th Cir. 1993). The court finds that the same analogy applies to claims under the Rehabilitation Act.¹⁰ To qualify for relief under the Act the fourth element requires the plaintiff to prove adverse treatment solely because of her handicap. Even if her employer's actions were unfair, demonstrated a lack of compassion, or even if it was wrong or unlawful, that does not create a cause of action under the Act. The court is of the opinion that the plaintiff has wholly and completely failed to show that any of the actions which resulted in her ultimate resignation were a result of her diabetes. Therefore, summary judgment in favor of the University is appropriate on this ground.¹¹

III.

Finally, the court recognizes that the complaint also included a state law claim for breach of implied duty of good faith. The plaintiff simply asserts that Mississippi law implies an obligation of good faith under all employment contracts. Although this issue was not briefed, the court takes this opportunity to address the claim. In Hartle v. Packard Elec., 626 So. 2d 106 (Miss. 1993), the Mississippi Supreme court specifically held that an employment contract does not create an implied duty of good faith and as such the employment "at-will" doctrine is not altered. Id. at 110. Under this most recent holding, plaintiff's claim for breach of good faith must be summarily dismissed because Mississippi does not recognize such a covenant in the employment "at-will" setting.

CONCLUSION

For the reasons stated above, the court is of the opinion that the University's motion for

¹⁰ In Pesterfield v. Tennessee Valley Authority, 941 F.2d 437 (6th Cir. 1991), the Sixth Circuit found because plaintiff failed to prove that TVA's decision to terminate him was based on handicap, judgment in favor of TVA was appropriate. Id. at 443. The court further held that proof of discriminatory intent is necessary to prevail in a suit under the Rehabilitation Act alleging disparate treatment. Id. As in Pesterfield, the record here is completely devoid of any evidence linking the mistreatment of Jones to her handicap.

¹¹ The defendant also moved for summary judgment on the basis that there was no genuine issue of material fact regarding Jones' allegation that she was constructively discharged. Because the court grants the motion on the grounds stated above, a discussion of this issue is not necessary.

summary judgment is well taken, therefore, the motion will be granted.

A order in accordance with this memorandum opinion shall issue this day.

THIS ___ day of September, 1994.

United States District Judge

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FARRAH JONES

Plaintiff

v.

Civil Action No. 1:93CV72-D-D

MISSISSIPPI STATE UNIVERSITY

Defendant

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

The above styled cause has come before the undersigned upon motion of defendant Mississippi State University for summary judgment pursuant to Federal Rule of Civil Procedure 56. In accordance with a memorandum opinion issued this day, defendant's motion for summary judgment is well taken, and the same is hereby **GRANTED**. This cause of action is **dismissed with prejudice** as to all claims.

In sustaining the motion for summary judgment, all deposition excerpts, exhibits, affidavits and memoranda briefs considered by the court are incorporated into and made a part of the record in this cause.

So **ORDERED** this ___ day of September, 1994.

United States District Judge